Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

21st April - 03rd May 2025

1) SC Upholds Limited Use of Article 142 to Modify Arbitral Awards..... 1
2) Demand for Bribe Must Be Proven, Mere Recovery of Tainted Money Not Enough: SC..... 1
3) Gang Rape, Common Intention Makes All Accused Liable Even If Only One Commits Act: SC.. 2
4) Forfeiture Valid When Buyer Defaults: SC Clarifies Scope of Section 74 Contract Act..... 2
5. Supreme Court Clarifies Scope of Supervisory Jurisdiction under A.227..... 3
6. General Assembly Power and Function..... 3

Weekly Focus

Case of the week : Abu Salem Abdul Kayyum Ansari v. State of Maharashtra..... 4
PYQ Solution..... 5



1) SC Upholds Limited Use of Article 142 to Modify Arbitral Awards

In a recent ruling,*Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, the Supreme Court has held that it can invoke its plenary powers under Article 142 of the Constitution to modify arbitral awards, but only in exceptional cases where such intervention is essential to bring finality to litigation without interfering with the merits of the award. The majority judgment, authored by Chief Justice Sanjiv Khanna on behalf of a Constitution Bench, clarified that such power must be exercised with caution and in consonance with the Arbitration and Conciliation Act, 1996.

The Court emphasized that Article 142 should be used to ensure "complete justice" between parties, particularly where prolonged litigation causes undue hardship. It relied on the precedent set in *Shilpa Sailesh v. Varun Sreenivasan*, which permitted the dissolution of marriages under Article 142 despite the lack of specific statutory provision. However, the Court reiterated that this power is not unfettered and must respect fundamental public policy and statutory limitations. Modification under Article 142 should not amount to rewriting or re-adjudicating the arbitral award on its merits, but should merely serve to resolve the dispute effectively and prevent further litigation.

Justice KV Viswanathan, however, dissented strongly, arguing that modifying arbitral awards—even through Article 142—violates the foundational principles of the arbitration regime. He asserted that Section 34 of the A&C Act provides the exclusive mechanism to challenge awards, and that judicial intervention beyond this would undermine party autonomy, finality of awards, and the predictability of outcomes—key features of the arbitral process.

Justice Viswanathan relied on *Supreme Court Bar Association v. Union of India*, which held that Article 142 cannot be used to override substantive law. He warned that allowing such modifications at the final stage could erode confidence in arbitration as an alternative dispute resolution mechanism.

2) Demand for Bribe Must Be Proven, Mere Recovery of Tainted Money Not Enough: SC

In *Aman Bhatia v. State (GNCT of Delhi)*, the Supreme Court reiterated that mere recovery of tainted currency from a public servant, without proof of bribe demand, is insufficient to establish guilt under the Prevention of Corruption Act, 1988. A bench comprising Justices JB Pardiwala and R. Mahadevan emphasized that both *demand* and *acceptance* of illegal gratification are essential ingredients for a conviction under Sections 7 and 13(1)(d) read with Section 13(2) of the Act.

The case arose from a complaint alleging that the appellant, a stamp vendor, demanded ₹2 extra on a ₹10 stamp paper. A trap was laid by the Anti-Corruption Bureau, resulting in recovery of the marked currency notes. However, the prosecution failed to establish any direct evidence of a demand or voluntary acceptance of the alleged bribe.

The Court clarified that even in the absence of a verbal demand, there must be unequivocal evidence of a "meeting of minds" — where the public servant knowingly accepts the amount as illegal gratification. The Court underscored that a mere offer by the complainant or the presence of currency with the accused cannot constitute an offence unless there is clear evidence of the recipient's intent and awareness.

While rejecting the appellant's argument that he was not a public servant, the Court held that stamp vendors fall within the ambit of 'public servant' under the PC Act and are liable to be prosecuted for corrupt practices.

Ultimately, due to lack of proof of demand and absence of a proven offer accepted knowingly by the accused, the Court acquitted the appellant.

3) Gang Rape, Common Intention Makes All Accused Liable Even If Only One Commits Act: SC

In *Raju @ Umakant v. State of Madhya Pradesh*, the Supreme Court reaffirmed that under Section 376(2)(g) of the Indian Penal Code, all accused can be held guilty of gang rape even if only one of them commits the actual penetrative act, as long as there is proof of common intention.

A bench comprising Justices Sanjay Karol and KV Viswanathan upheld the conviction of individuals accused of gang rape, rejecting the defense argument that they should be exonerated because they did not personally engage in penetration. The Court cited *Ashok Kumar v. State of Haryana* (2003), which clarified that individual penetrative acts by each accused are not necessary for conviction under gang rape provisions, so long as the group acted with a shared intent to sexually assault the victim.

The case involved the abduction and wrongful confinement of a woman, followed by her sexual assault. The appellants had actively participated in the abduction and confinement but argued they should not be convicted of gang rape because they did not engage in the physical act. The Court rejected this contention, holding that such involvement, coupled with the shared intention, was sufficient to attract liability under Section 376(2)(g).

Justice Viswanathan, writing the judgment, emphasized that the common intention to commit the offence and active participation in the chain of events were evident. He stated that the prosecutrix's testimony, along with the established facts of abduction and assault, clearly satisfied the ingredients of gang rape under the law..

4) Forfeiture Valid When Buyer Defaults: SC Clarifies Scope of Section 74 Contract Act

In *K.R. Suresh v. R. Poornima & Ors.*, the Supreme Court upheld the forfeiture of ₹20 lakhs paid as "earnest money" under an Advance Sale Agreement (ATS), ruling that such forfeiture is not penal in nature and does not automatically attract Section 74 of the Indian Contract Act, 1872.

The appellant-purchaser failed to pay the balance sale consideration of ₹35.5 lakhs within the stipulated four-month period. The seller, citing a forfeiture clause in the ATS, retained the ₹20 lakhs deposited as earnest money. While the purchaser claimed this amount was merely part-payment and could not be forfeited, the Court disagreed.

A bench comprising Justices JB Pardiwala and R. Mahadevan held that earnest money, unlike an advance or part-payment, serves as a **security for due performance** of the contract. It is forfeitable on the buyer's default, even without specific proof of loss or damage, unless such forfeiture is shown to be unconscionable or one-sided.

The Court distinguished between *earnest money* and *advance payment*. While earnest money is a deposit indicating commitment to the contract and can be forfeited on default, an advance is part of the purchase price and is generally refundable unless otherwise agreed. The Court, relying on precedents like *Fateh Chand v. Balkishan Dass*, *Satish Batra v. Sudhir Rawal*, and *Central Bank of India v. Shanmugavelu*, clarified that only if a forfeiture clause is **penal or unreasonable** will Section 74 apply.

Even assuming Section 74 applies, the Court found the seller's forfeiture justified, as the breach caused substantial loss. The earnest money was clearly intended as a guarantee, evidenced by the ATS language and the urgency of the sale due to a pending One-Time Settlement (OTS) obligation.

5. Supreme Court Clarifies Scope of Supervisory Jurisdiction under A.227

In *K. Valarmathi v. Kumaresan*, the Supreme Court ruled that a High Court, while exercising its supervisory jurisdiction under Article 227 of the Constitution, cannot reject a plaint—an act reserved for the trial court under the Civil Procedure Code (CPC). The bench, comprising Justices PS Narasimha and Joymalya Bagchi, strongly rebuked the Madras High Court's action of rejecting a plaint by invoking Article 227, calling it a judicial overreach and contrary to established procedural law.

The judgment clarified that Article 227 gives the High Court only **supervisory powers** to ensure that subordinate courts function within their jurisdiction. This power, the Court noted, is **not original or appellate** and should be exercised sparingly—primarily to correct jurisdictional errors or perverse decisions that result in grave injustice.

The Court emphasized that the **rejection of a plaint is governed strictly by Order VII Rule 11 CPC**, which can only be exercised by the trial court, and any such rejection is treated as a **deemed decree**, appealable under Section 96 CPC. By rejecting the plaint itself, the High Court not only bypassed this statutory mechanism but also deprived the appellant of the right to appeal—a serious procedural irregularity.

The Court criticized what it termed a "short-circuiting of procedure" and warned against judicial tendencies that undermine procedural safeguards in pursuit of quick outcomes. It reaffirmed its

earlier decision in *Jacky v. Tiny @ Antony* (2014), holding that rejection of plaint under Articles 226 or 227 is impermissible.

6. General Assembly Power and Function

Established in 1945 under Article 9 of the UN Charter, the General Assembly (GA) is the chief deliberative, policymaking, and representative organ of the United Nations. Comprising all 193 Member States (Article 9(1)), it serves as a forum for multilateral negotiation on the full range of international issues covered by the Charter. Each member has one vote (Article 18(1)).

Core Functions and Powers: Under Articles 10 to 17 of the UN Charter, the General Assembly is empowered to:

- Discuss and make recommendations on international peace and security (Article 11).
- Initiate studies and promote cooperation in political, legal, economic, social, cultural, and humanitarian fields (Article 13).
- Encourage codification and development of international law (Article 13(1)(a)).
- Promote the realization of human rights and fundamental freedoms for all (Article 13(1)(b)).
- Approve the UN budget and determine Member State contributions (Article 17).
- Elect non-permanent members of the Security Council, members of other UN bodies, and appoint the Secretary-General upon the recommendation of the Security Council (Articles 18(2), 97).
- Consider and make recommendations for the peaceful settlement of disputes (Article 14).
- Receive and consider reports from the Security Council and other UN organs (Article 15).

Emergency Powers – "Uniting for Peace"
While the Security Council has the primary responsibility for international peace (Article 24), if it fails to act due to vetoes by permanent members, the General Assembly may step in under the "Uniting for Peace" resolution of 1950, relying on Article 11 and Article 14, to recommend collective measures, including the use of armed force.

Decision-Making Process

- Important matters (e.g., peace and security, elections, budget) require a two-thirds majority (Article 18(2)).
- Other matters are decided by a simple majority (Article 18(3)).
- Consensus is widely used following informal consultations.

Sessions and Committees

- The GA holds regular annual sessions (September–December) and resumed sessions (January–September) as needed.
- Under Article 22, the GA may establish subsidiary organs to support its functions.
- The work is divided among six Main Committees, each addressing specific themes:
    1. Disarmament and International Security (First Committee)
    2. Economic and Financial (Second Committee)
    3. Social, Humanitarian and Cultural (Third Committee)
    4. Special Political and Decolonization (Fourth Committee)
    5. Administrative and Budgetary (Fifth Committee)
    6. Legal (Sixth Committee)

Weekly Focus

Case of the week : Abu Salem Abdul Kayyum Ansari v. State of Maharashtra

The Supreme Court ruled that gangster Abu Salem cannot be detained beyond 25 years from the start of his sentence in India, honoring India's solemn assurance given to Portugal at the time of his extradition. The decision, delivered by Justices Sanjay Kishan Kaul and MM Sundresh, affirms the principle of **comity of courts** and adherence to international commitments.

Why This Decision Was Made

Salem was extradited from Portugal in 2005, based on the Indian government's assurance that he would not face the death penalty or imprisonment beyond 25 years. The Court held that this assurance, made to secure his extradition, is binding on the Indian State. His sentence began on **12.10.2005**, meaning his imprisonment must end by **11.11.2030**.

The Union of India confirmed in an affidavit that it would abide by the assurance. Therefore, the Court directed that within a **month after completion of 25 years**, the Government must initiate steps to **commute his sentence** by advising the President under **Article 72 of the Constitution** or acting under **Sections 432/433 CrPC**.

Why the Judgment Was Given Now

Although Salem's 25-year term ends in 2030, the Court issued this ruling early to prevent uncertainty and ensure timely compliance with the extradition condition. The Court stated that adhering to the assurance was essential to maintain India's credibility and honor the **rule of law** at the international level.

No Set-Off for Time Served in Portugal

Salem argued that his jail time from 2002 in Portugal should be counted. The Court rejected this, clarifying that **foreign incarceration** unrelated to the Indian trial does not apply to sentence computation under Indian criminal law.

PYQ Solution

The goals specified in the Preamble contain the basic structure of the Constitution, (which cannot be amended under Article 368) of the Constitution. Analyse this statement in the light of leading decided cases.

The Preamble to the Constitution of India sets forth the principles that guide the Constitution. It has been referred to as the soul of the Constitution, expressing its spirit and fundamental values. It declares India to be a Sovereign, Socialist, Secular, and Democratic Republic, committed to securing justice, liberty, equality, and fraternity for its citizens.

Article 368 of the Indian Constitution provides for the amendment of the Constitution. It confers power on the Parliament to amend any provision of the Constitution, but with certain limitations. One such limitation is the 'Basic Structure' doctrine, propounded by the Supreme Court of India.

Basic Structure
The concept of the "Basic Structure" was first introduced in the landmark case of Kesavananda Bharati v. State of Kerala (1973). The Court ruled that while the Parliament has wide powers to

amend the Constitution under Article 368, it does not have the power to alter or destroy its 'basic structure'.

Preamble and basic Structure
Turning back to the Preamble, the legal status of the Preamble and its amendability has been the subject of several landmark decisions. The initial position, taken in the case of Berubari Union (1960), was that the Preamble is not an integral part of the Constitution.

However, this position was overruled in the Kesavananda Bharati case, where the Supreme Court held that the Preamble is a part of the Constitution and can be amended, subject to the condition that the 'basic structure' of the Constitution is not destroyed.

Though the Court did not definitively enumerate the elements of the 'basic structure', it suggested that it includes principles like democracy, republicanism, secularism, separation of powers, and the preservation of individual rights. All these are goals provided in preamble as well

Secularism: Preamble and Basic Structure
In the SR Bommai v. Union of India case (1994), the Supreme Court reiterated the importance of the principles mentioned in the Preamble, stating that the secular nature of the Indian state, explicitly stated in the Preamble, is a part of the 'basic structure' of the Constitution. Any amendment seeking to alter this secular character would be deemed unconstitutional.

De Facto IAS